

Rulemaking Advisory Committee Meeting #4

Plastic Pollution and Recycling Modernization Act

Jan. 31, 2024
Zoom Meeting

Agenda

Time	Topic
9:05 a.m.	Welcome, Overview of Today's Meeting
9:10 a.m.	Introductions- DEQ staff and RAC members
9:20 a.m.	Rulemaking 1 Update
9:30 a.m.	Rule Concept: Contamination Management Fee and Processor Commodity Risk Fee
10:30 a.m.	BREAK
10:40 a.m.	Rule concept: Clarifications to and Exemptions from "Covered Products"
11:30 a.m.	Public Input Period
11:45 a.m.	Rule concept: Associated producers and designation of large and small producers
11:55 a.m.	Rule concept: Housekeeping- requiring PRO annual report for 2024
12:15 p.m.	Meeting adjourns

Note: Times subject to change and topics may begin earlier than listed

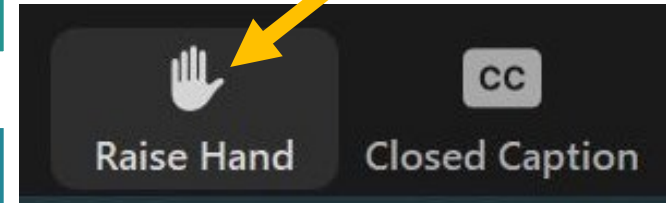
Meeting tips

Join audio either by phone or computer, not both

For panelist discussion and comments, use the raise hand button to get in the queue; if by phone press *9

This meeting is being recorded

For Zoom technical issues email:
stephanie.caldera@deq.oregon.gov



Meeting agreements

- Listen and treat everyone with respect
- Allow one person to speak at a time
 - Please raise your hand
- Move around and take care of yourself as needed
- Share constructive feedback on rule concepts



Introductions - DEQ staff



Alex Bertolucci, meeting facilitator



Justin Gast, lead for processor permit/certification and CRPF fees



Nicole Portley, lead for covered product, producer, and PRO rules

Introductions - RAC

Name	Affiliation	Representing
Aimee Thompson	Thompson Sanitary Service	Service Provider
Catherine McCausland	Reverse Logistics Group	Producer Responsibility Organization
Claire Dorfman	Amazon	Producer
Doug Mander	Circular Action Alliance	Producer Responsibility Organization
Jeff Murray (alternate for Greg Ryan)	EFI	Commingled Recycling Processing Facility
Katy Nesbitt	Wallowa County	Local Government
Kristin Leichner	Pride Disposal	Service Provider
Marcel Howard	GAIA	Environmental
Maria Gabriela Buamscha	Lanin Iman Consulting	Community

Introductions - RAC

Name	Affiliation	Representing
Neil Menezes	General Mills	Producer
Rick Paul	Rim Rock Recycling	Community
Chris Drier	Waste Management	Commingled Recycling Processing Facility
Sydney Harris	Upstream	Environmental
Tracey Reed	Rogue Basin Partnership	Community
Warren Johnson	Metro	Local Government
Will Posegate	Garten Services Inc.	Commingled Recycling Processing Facility

Questions?



Rulemaking 1: Update

The EQC adopted rulemaking #1 rules in Nov. 2023!



Funding for Recycling Processors under the Recycling Modernization Act

Processor Commodity Risk Fee

A per-ton fee paid to recycling processors by PROs to ensure producers share in the costs of fully processing commingled recyclables.

The statewide average portion of the fee is set in rule, and the average commodity value portion will be updated monthly by DEQ.

Tip fees

A per-ton fee paid to recycling processors by collectors to help cover the cost of processing recyclable material. Garbage and recycling collection companies factor the tip fee into the fee they charge customers.

The Processor Commodity Risk Fee will attempt to lower this per-ton gate cost to \$0 as a statewide average.

Sales of recyclable materials to responsible end markets

Income paid to recycling processors by responsible end markets in exchange for quality material.

To try and keep tip fees at \$0, when commodity prices rise, the Processor Commodity Risk Fee will fall; and when commodity prices fall, the Processor Commodity Risk fee will rise

Contamination Management Fee

A per-ton fee paid to recycling processors by PROs to compensate processors for the costs of removing and disposing of covered products that are contaminants, such as those not on the statewide collection list that show up at a recycling facility.

The fee is set in rule and adjusted periodically for inflation.

Funds cover existing and new facility costs

- Operating and administrative costs
- Meeting new permit/certification program requirements




Outcomes

- Living wages and supportive benefits for workers at processing facilities.
- Higher quality bales.
- Transparent disposition of materials to responsible end markets
- Less volatile tip fees and collection costs for ratepayers and local governments.

Contamination Management Fee



 Oregon Department of Environmental Quality
Rule Concept: Commingled Recycling Processing Facility Fees Contamination Management Fee
Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information and draft rule concepts associated with the Contamination Management Fee (ORS 459A.920), one of two funding mechanisms under the Recycling Modernization Act meant solely for commingled recycling processing facilities. See Appendix 1 for an overview of how these kinds of facilities will be funded when the Act is fully implemented.

Under ORS 459A.920 (1), the Environmental Quality Commission shall by rule adopt and periodically revise a contamination management fee to be paid by producer responsibility organizations to commingled recycling processing facilities. This fee will compensate the facilities for the costs of removing and disposing covered products that are contaminants.

Rule concepts for discussion at Jan. 31, 2024 RAC meeting

Four rule concepts related to the Contamination Management Fee follow:

- I. [Definitions](#)
- II. [Establishing the fee](#)
- III. [Invoicing](#)
- IV. [Ineligible material and appropriate fee charging](#)


I. Definitions

Background
ORS 459A.863(3) defines 'Commingled recycling processing facility' as follows:

(3)(a) "Commingled recycling processing facility" means a facility that:
(A) Receives source separated commingled recyclable materials that are collected commingled from a collection program providing the opportunity to recycle; and
(B) Separates the recyclable materials described in subparagraph (A) of this paragraph into marketable commodities or streams of materials that are intended for use or further processing by others.

(b) "Commingled recycling processing facility" does not include:
(A) Scrap metal recycling facilities;
(B) Scrap automotive or appliance recycling facilities;

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 State of Oregon
Department of Environmental Quality



How we got here

- DEQ worked with processors and local governments on the creation of the CMF and PCRFR at the tail end of the RSC process.

Commingled Recycling Processing Facility Technical Workgroup:

Jeff Murray, EFI Recycling

Vinod Singh, Far West Recycling

Will Posegate, Garten Services

Travis St. Clair, International Paper

Greg Ryan, Pioneer Recycling Services

Frank Nelson, Recology

Nathan Smith, Waste Connections

Chris Drier, WM

Jerry Hartley, Westrock

Gabriela Buamscha, public member

Doug Mander, Circular Action Alliance

Kim Holmes, 4R Sustainability

Dave Garten, PSU, School of Business

Rick Winterhalter, Clackamas County

Angie Marzano, Lane County

Sabrina Gogol, Metro

Mark Andersen, Bulk Handling Systems

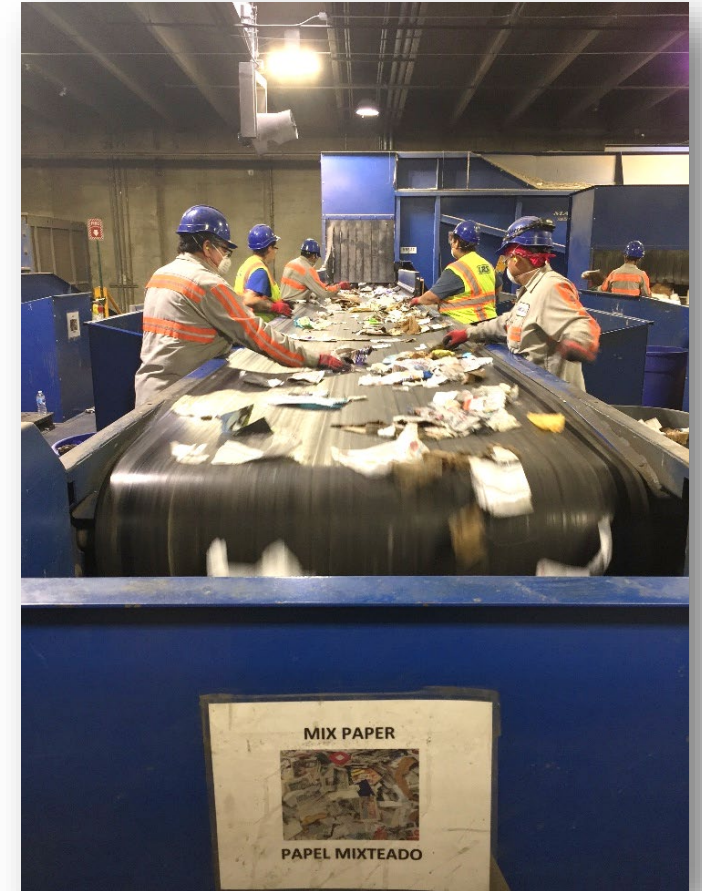
CMF – Definitions

‘Eligible material’ means:

- (A) Any covered product, as defined by the law, that is not listed for collection on the USCL...but which shows up in the inbound stream at a commingled recycling processing facility; and
- (B) Any covered product that is included in the USCL but which was improperly prepared by system users to the point the material is difficult for the processing facility to handle or market.

‘Ineligible material’ means:

- (A) Any item that is listed on the USCL and properly prepared for recycling;
- (B) Any item that is not a covered product, as defined by the law
- (C) Any material that originated outside of Oregon; and
- (D) Any material originating in a mixed waste processing system that has been transferred to a co-located commingled recycling processing facility for the purposes of processing.



CMF – Establishing the fee

Proposed Contamination Management Fee	
2025/2026 program years July 1, '25 – Dec. 31, '26	\$374 per ton
2027 program year Jan. 1, '27 – Dec. 31, '27	\$476 per ton
2028 program year Jan. 1, '28 – Dec. 31, '28	\$457 per ton

- The 2028 fee will be for all years thereafter until updated by rule.
- The per-ton fee will be multiplied against the eligible outbound residual tonnage coming from a CRPF handling USCL material.

CMF – Establishing the fee



Questions or feedback about the per-ton rate?



CMF – Invoicing

- Only CRPFs that meet the requirements under the law are eligible to invoice for and receive CMF funding.
- CMF funding would be assessed on tons of covered product sent to disposal that was collected by a commingled recycling collection program in Oregon.
- Material originating outside Oregon and material that is not a covered product, or which is collected by a non-RMA related collection program, would not be eligible for CMF funding.



CMF - Invoicing

1 **A tons** + **B tons** = Total **eligible** tons processed

2 **C tons** + **D tons** = Total **ineligible** tons processed

3 Total **eligible** tons processed (**A+B**) + Total **ineligible** tons processed (**C+D**) = Total tons processed

4 Total **eligible** tons processed (**A+B**) ÷ Total tons processed (**A+B+C**) = % of total that is **eligible**

5 Composite % of total that is **eligible** × .437 = Composite % of disposal that is eligible (in-state covered products)

A. Eligible tons received and processed from in-state, local government collection programs.

B. Eligible tons acquired from other CRPFs.

C. Ineligible tons of out-of-state-generated commingled material processed.

D. Combined tons of ineligible non-RMA-program and non-commingled material processed.

43.7% - contamination that is covered products. Determined by 2023 Inbound Commingled Recycling Study and updated with each study to determine the Contamination Management Fee.

CMF - Invoicing

6 E tons* \times Composite % of disposal that is eligible (in-state covered products). Answer from #5 $=$ **Invoiceable tons**

E. Total tons of residuals sent to **disposal** for [month, year]*

7 Invoiceable tons \times Contamination Management Fee (per-ton fee) $=$ \$ value CRPFs will invoice PROs monthly for

Contamination Management Fee	
2025/2026	\$374 per ton
2027	\$476 per ton
2028	\$457 per ton

*figures may change from month to month

CMF – Covered product contamination



- A CRPF can include in its CMF invoice all tons of Oregon-generated covered product contamination (material not on the USCL) processed and marketed, so long as the covered product is desired by the responsible end market and all other standards for reporting and responsible end markets are met.
- Tonnage may only be counted if the non-USCL material is baled separate of other USCL material (e.g., plastic film bales).
- CRPF would receive full per-ton funding for these tons.

CMF – Invoicing



Discussion prompts

- Are there any questions regarding the invoicing approach to be used with the CMF?
- Any questions regarding the handling of covered product contamination?



CMF – Ineligible material/charging of fee

- Monthly, CRPFs will provide DEQ the following:
 - Transactional data associated with each inbound load of commingled recyclables delivered to facility.
 - Invoiceable outbound residual tonnage figure.
 - Total tons of covered product contamination sent to market figure separate from the invoiceable outbound residual tonnage figure. These two figures will not be reported in a combined manner.
- DEQ, the PRO, or a combination of both, will conduct on-site and off-site assessments of facility-specific data, to ensure data is accurate and that a CRPF is not invoicing for ineligible tons.



CMF – Ineligible material/charging of fee



Discussion prompts

- Should the rule require any additional data, or additional ongoing requirements to ensure that the fee is appropriately charged?



Processor Commodity Risk Fee



Oregon Department of Environmental Quality
**Rule Concept: Commingled Recycling
Processing Facility Fees
Processor Commodity Risk Fee**

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information and draft rule concepts associated with the Processor Commodity Risk Fee (ORS 459A.923), one of two funding mechanisms meant solely for commingled recycling processing facilities.

Under ORS 459A.923(2), the Environmental Quality Commission shall by rule adopt and periodically revise a processor commodity risk fee to be paid by producer responsibility organizations to commingled recycling processing facilities. The fee will ensure that producers share in the costs of fully processing commingled recyclables and to allow local governments to reduce the financial impacts on ratepayers.

The processor commodity risk fee shall be based on the eligible processing costs of facilities less the average commodity value of recyclable materials processed by facilities. The eligible processing cost is to be established in rule as a fixed value, or schedule of values. The average commodity value is to be established in rule as a formula or algorithm that allows for monthly adjustments based on changes in commodity prices.

Rule concepts for discussion at Jan. 31, 2024 RAC meeting

Four rule concepts related to the Processor Commodity Risk Fee follow:

- I. [Statewide, per-ton average eligible processing cost](#)
- II. [Average Commodity Value](#)
- III. [Invoicing](#)
- IV. [Appropriate fee charging](#)

I. Statewide, per-ton average eligible processing cost

Background

Per ORS 459A.923:

(2) The Environmental Quality Commission shall by rule adopt and periodically revise a processor commodity risk fee to be paid by producer responsibility organizations to commingled recycling processing facilities to ensure that producers share in the costs of fully processing commingled recyclables that are covered products and to allow local governments to reduce the financial impacts on ratepayers. The processor commodity risk fee shall be based on the eligible

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PCRPF – Statewide processing cost

PCRPF- Statewide average processing cost

2025/2026 program years - July 1, '25 – Dec. 31, '26	\$201 per ton
2027 program year - Jan. 1, '27 – Dec. 31, '27	\$287 per ton
2028 program year - Jan. 1, '28 – Dec. 31, '28 and all years thereafter until updated by rule	\$246 per ton

The difference between the statewide, per-ton average eligible processing cost and the Average Commodity Value of materials processed will be multiplied against the total first tons in of eligible material coming into a CRPF.

PCRf – Statewide processing cost



Discussion prompts

- Questions or feedback about the per-ton processing cost?



PCRf – Average commodity value

ACV will be calculated by DEQ monthly and will be the sum of weighting factors multiplied by market prices for each of nine material categories:

Material	Percentage makeup of the average inbound ton
Cardboard	49.1%
Other Paper Fiber	32.4%
PET	1.0%
HDPE, Natural	0.7%
HDPE, Color	1.0%
Mixed Plastic	0.6%
Tin/Steel Cans	1.4%
Aluminum	0.8%
Other Materials (including contamination)	12.9%



PCRFR – Average commodity value



- Scrap pricing indices
 - RecyclingMarkets.net, Secondary Materials Pricing
 - Waste Paper Composite Index
- Scrap pricing data specific to Region 4 – Pacific Northwest (ID, OR, WA and British Columbia) to be pulled from the published scrap pricing indices. Where prices are reported only on a national basis, national pricing data will be used.
- Commodity pricing categories to be used with the proposed scrap pricing indices to determine the published source market price can be viewed on page 4 of rule concept.

PCRFR – Average commodity value

- If one or both of the scrap pricing indices becomes unavailable, DEQ will calculate the percent change in a replacement index between the current month and the last month that the original source was available; DEQ will then apply that percent change to the last month that the original source data was available.
- Secondary sources as replacement indices:
 - OCC and Other Paper Fiber – FRED Producer Price Index by Commodity;
 - PET and HDPE (color and natural) – PlasticsNews.com North America recycled plastic resin price for post-consumer flake (clear, natural and mixed colors); and
 - Aluminum – ScrapIndex.org baled UBC monthly price.



PCRFB – Average commodity value



- To calculate a monthly average published source market price for any given commodity:
 - For commodity values sourced from the Waste Paper Composite Index, utilize the published commodity value for the month.
 - For commodity values sourced from Recyclingmarkets.net, determine the ACV by identifying the Regional Average prices for each day that data is published (note, published days vary by commodity and over time) for the last day of the prior month and through the month in question to identify the daily commodity values. Once the daily values are identified, calculate the ACV for the month.

PCRFB – Average commodity value

The following equation to be used monthly to determine to determine the ACV:

Average Commodity Value = *(Weighted average market price x Oregon-specific average commodity value differential of 5.39% (or 0.0539)) + Weighted average market price*

After ACV for a specific month is established, DEQ will provide CRPFs the figure for the month being invoiced for within the first week of the subsequent month, and then post that figure to a designated DEQ webpage.



PCRFB – Average commodity value

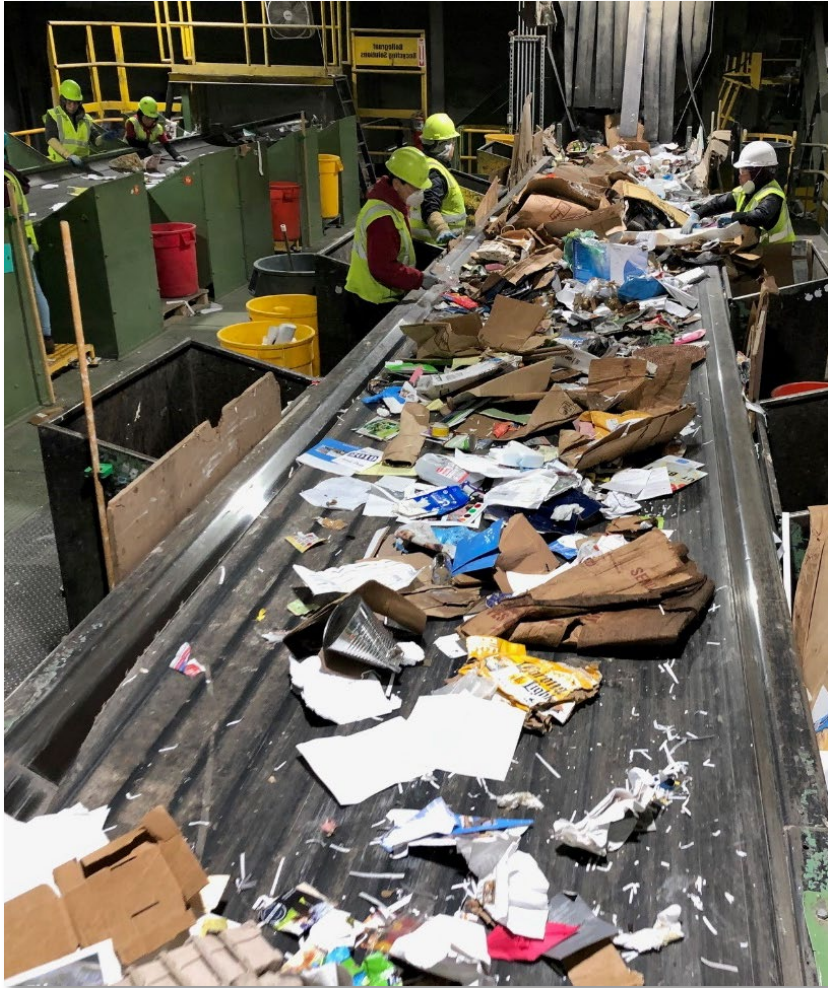


Discussion prompts

- Are there any questions regarding how DEQ will determine the monthly ACV?



PCRPF – Invoicing



- CRPF shall not invoice a PRO for any tons processed in a given month until that month has concluded. If for any reason a processing facility chooses to hold onto an invoice, with the purpose of submitting multiple invoices at a later date:
 - A facility shall not combine eligible tons from different months into one invoice.
 - A facility shall not hold onto invoices for the purpose of holding out for a higher ACV and submitting multiple months' worth of tons in relation to that higher figure.

PCRFB – Invoicing

- CRPFs shall not invoice for any tons of commingled recycling handled which originated outside the State of Oregon.
- CRPFs shall not invoice for any tons of non-commingled recycling handled, or any tons of commingled recycling which were previously handled by a different CRPF.
- CRPFs shall not invoice for PCRFB funding any tons of material that are invoiced for the purpose of receiving CMF funding.
- For the purposes of payment, the difference of the statewide, per-ton average eligible processing cost and the ACV will be multiplied against the total first tons in of eligible material for a given month coming into a CRPF.



PCRPF – Invoicing

TOTAL TONS RECEIVED BY [CRPF NAME HERE] FOR [MONTH AND YEAR]: [figure] tons

A. Eligible tons of commingled USCL material received from local government recycling collection programs: **[figure] tons**

TOTAL [MONTH AND YEAR] INVOICABLE TONS: [figure] tons

PCRFR – Invoicing

**TOTAL TONS INELIGIBLE FOR PROCESSOR COMMODITY RISK
FEE FUNDING FOR [MONTH AND YEAR]: [figure] tons**

Tons that are ineligible for Processor Commodity Risk Fee funding are:

- B. Tons of out-of-state-originated material processed: **# of tons**
- C. Tons of in-state but non-RMA-program material processed: **# of tons**
- D. Tons of in-state but additional non-commingled recyclable material processed: **# of tons**
- E. Tons of commingled USCL material acquired from other CRPFs: **# of tons**
- F. Tons of material invoiced for the purpose of receiving Contamination Management Fee funding: **# of tons**

**(Statewide, per-ton average eligible processing cost – Average Commodity Value) X [figure]
invoiceable tons for [month and year] = \$ to be paid**

PCRF – Invoicing



Discussion prompts

- Are there any questions regarding the invoicing approach to be used with the PCRF?



PCRPF – Appropriate charging of fee



- CRPFs will provide DEQ monthly transactional data associated with each inbound load of commingled recyclables received by the processing facility.
- DEQ, the PRO, or a combination of both, will conduct on-site and off-site assessments of facility-specific data, to ensure the facility is not invoicing for ineligible tons.
- A CRPF cannot purposefully invoice a PRO for ineligible tons. In the event that a CRPF was found to have unintentionally invoiced a PRO for ineligible tons, the processing facility shall promptly compensate the PRO for all inappropriately charged tons.

PCRf – Invoicing



Discussion prompts

- Should DEQ require that other information be provided on a monthly basis?



Break



Clarifications to “Covered Product”



State of Oregon Department of Environmental Quality
Rule Concept: Clarifications and Exemptions to the Definition of “Covered Product”

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information regarding the definition of “covered product.” It clarifies the scope of “covered product” and indicates materials recommended for exclusion from that scope. Per ORS 459A.869, obligated producers of “covered products” must join a Producer Responsibility Organization, report data to the PRO on the amount of product they sell into the [state, and](#) pay membership fees.

ORS 459A.863(6)(a) defines “covered product” as (A) packaging; (B) printing and writing paper; and (C) food [serviceware](#). Each of these items are in turn defined at ORS 459A.863(18), (20), and (7) respectively.

ORS 459A.863(6)(b) provides an itemized list of packaging, paper, and food [serviceware](#) products that are specifically exempt from the definition of “covered product”. The statute also provides a placeholder for the Environmental Quality Commission to approve additional product-specific exemptions in rule. In anticipation of additional exemptions in rule, DEQ conducted an exemption request period between April-December 2023 to allow interested parties to request an exemption. The Oregon Recycling System Advisory Council was invited to review materials submitted and to advise DEQ on potential exemptions. For more information, see:

- DEQ’s exemption request [criteria](#),
- DEQ’s [analysis of all 27 exemption requests received](#), and
- The document “[Oregon Recycling Council: Covered Product Exemptions poll results](#),” which summarizes the Council’s recommendations to the department on the five exemptions recommended by DEQ.

Concepts for discussion at January 31, 2024 RAC meeting

The following ten rule concepts clarify the scope of “covered product.” The first three propose defining three sub-classes of packaging, specifying that these products are included within the scope of the law. A fourth clarifies the difference between “food [serviceware](#),” and “packaging” for types of products that could fall under either definition. Five additional proposals exempt items from the definition of “covered product” in rule, addressing ORS 459A.863(6)(a)(R). The final proposal clarifies the statutory exemption at ORS 459A.869(13).

Scope clarifications

- I. Clarifying definition of storage items as packaging
- II. Clarifying definition of service packaging
- III. Clarifying definition of consumer wraps as packaging
- IV. Further differentiating “food serviceware” from “packaging”

Exemptions

- V. Durable packaging for durable goods
- VI. Subset of professional use medical devices
- VII. Packaging used to manage infectious waste
- VIII. Subset of professional use agricultural chemical packaging
- IX. Subset of reusable and refillable pressurized cylinders






Clarification to a statutory exemption

- X. Clarifications on statutory exemption ORS 459A.869(13)

Storage items are packaging

A storage item is an item purchased empty and used for storage of other materials.

- The following storage items are packaging:

File boxes and folders	Moving boxes	Plastic storage bags, including garbage bags	Food containers for perishable or non-perishable foods	Plastic storage containers for durable items including large bins with and without lids
				

Service packaging is also in scope

Service packaging is packaging that is filled at the point of sale for the purpose of transferring goods to a consumer.

- The following items are service packaging:

Single-use shopping bags	Bags, wraps, single-use trays and associated items used by a retailer for packaging cheese, tofu, produce, meat, and fish	Trays provided to a consumer for containing multiple plants purchased at a nursery	Bags or envelopes used to contain screws, nails and other bulk fasteners at a hardware store
			

Consumer wraps are packaging

Wraps sold directly to consumers are packaging

- The following wraps are packaging:

Aluminum foil	Film wrap	Wax paper	Parchment paper	Gift wrap
				

Differentiating food serviceware from packaging

- Food serviceware is sold *empty or unused* to a retailer or dine-in or take-out restaurant who then uses it to prepackage food for resale, fills it on site, or resells it as is.
- Food serviceware is used to contain or consume food that is *ready to eat*.

Food Serviceware



Packaging



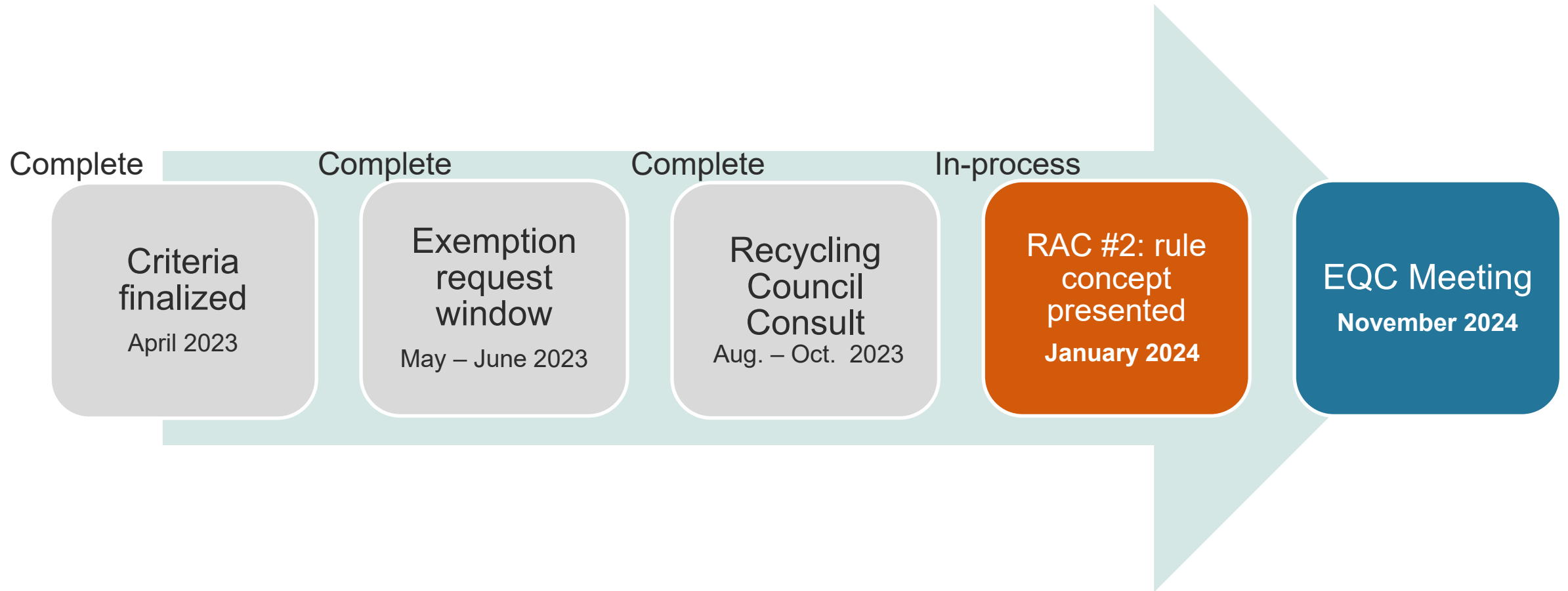
Scope clarifications: questions?



Questions or feedback about the scope clarification rule concepts?

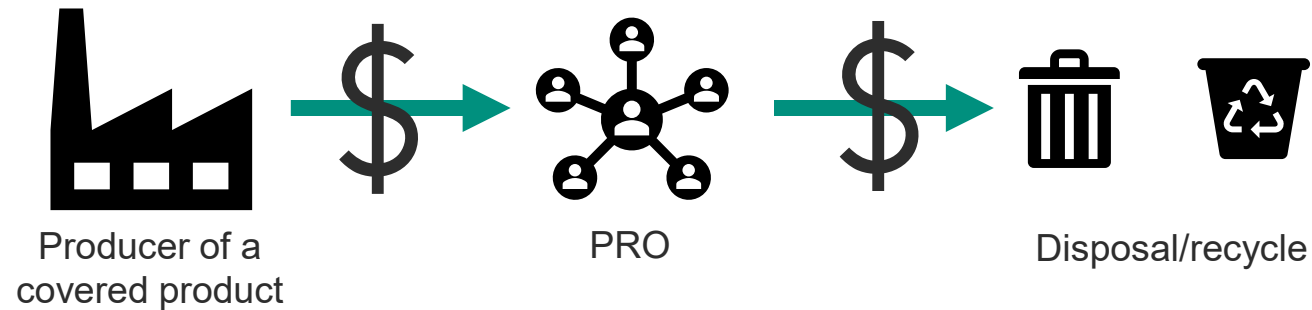


Covered product exemptions



What does “exempt” mean?

Producers of covered products pay fees to PROs for cover products sold into Oregon whether the items enter the recycling system or not. The costs to dispose of covered product is off-set by producer fees.



Producers of exempt products will not pay fees to a PRO for exempt items even if the material enters the recycling system. The cost to dispose of this material is covered by other producers and ratepayers.



Product exemptions scope

- Not material lists
- Not exempting producers
- Categories of products, not brand-specific



Examples of currently exempt products



Bottle Bill beverage containers



Refillable Liquefied petroleum gas



Retailer cardboard (if it goes directly to a responsible end markets and bypasses opportunity to recycle)



Architectural paint containers collected as part of Paint Care



Packaging for materials that go in and out of Oregon-based distribution centers

Product exemption criteria

A product may be exempt if:

- There is a strong rationale for exempting the product.
 - Bypasses the commingled system
 - Disposed of outside of the state
 - Covered by another EPR program
- Exemption doesn't result in considerable "free ridership".
- Exemption won't result in other negative impacts (e.g. environmental impacts, program impacts etc.)

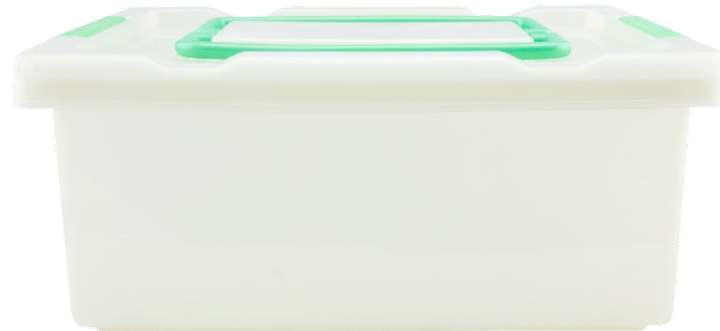
Exemption requests received

DEQ received and assessed 19 request documents containing 27 total product specific requests grouped in the following categories:

- 3 Durable storage containers
- 4 Printing and writing paper
- 4 Medical products
- 5 Hazardous waste products
- 4 Items with producer take-back programs or B2B recycling
- 2 Pressurized cylinders
- 5 Other products

Recommended for exemption #1

Packaging that is used for the long-term (i.e., five or more years) storage of a durable good (e.g. ornament boxes, durable storage totes).

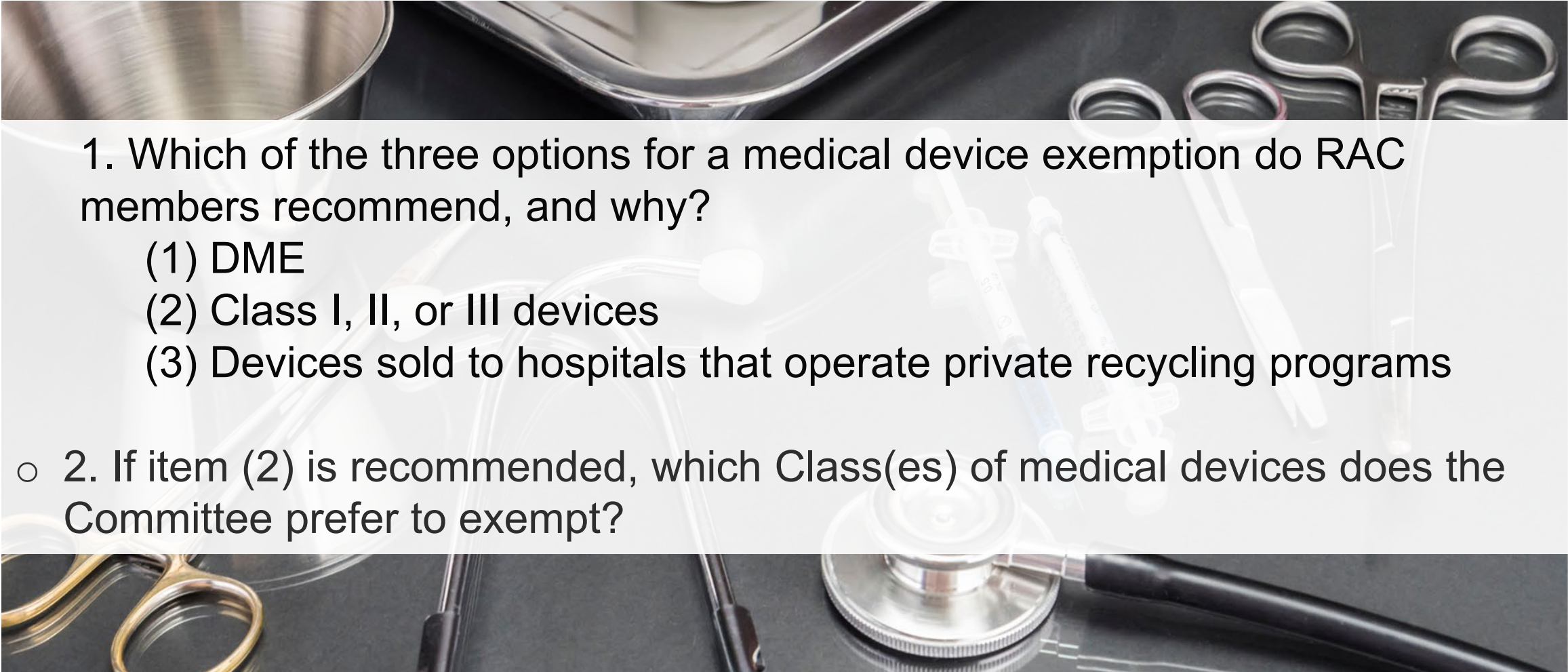


Recommended for exemption #2

1. Packaging that contains or protects durable medical equipment as defined in OAR 410-122-0010(4);
2. Packaging for class I, II, and/or III medical devices, **--or--**
3. Packaging for medical devices sold to and accepted for recycling at Oregon hospitals that operate private MRFs.



Discussion prompt



1. Which of the three options for a medical device exemption do RAC members recommend, and why?

(1) DME

(2) Class I, II, or III devices

(3) Devices sold to hospitals that operate private recycling programs

○ 2. If item (2) is recommended, which Class(es) of medical devices does the Committee prefer to exempt?

Recommended for exemption #3

Packaging used in healthcare facilities for the management of infectious waste as defined in ORS 459.386.



Recommended for exemption #4

Proposed for exemption:

1. Restricted-use pesticides sold to commercial applicators;
2. Returnable/refillable intermediate bulk containers (IBCs); and
3. Returnable/refillable asset totes, drums, and kegs.

Proposed for RAC consideration:

4. Rigid HDPE packaging of commercial-use pesticides, fertilizers and agricultural amendments produced by members of the Ag Container Recycling Council or ACRC.



Discussion prompt



Does the RAC recommend including in the proposed exemption for agricultural chemical containers rigid HDPE packaging of commercial-use pesticides, fertilizers and agricultural amendments produced by members of the Ag Container Recycling Council? Why or why not?



Recommended for exemption #5

Reusable and refillable pressurized cylinders that contain:

- 1) Pure hydrogen or oxygen, all sizes;
- 2) Acetylene, 10 cubic feet and larger in size; and
- 3) Carbon dioxide, 5 lbs and larger in size



Exemptions: Q and A, comments



Clarifying ORS 459A.869(13)

Producers can claim an exemption for the proportion of their material that:

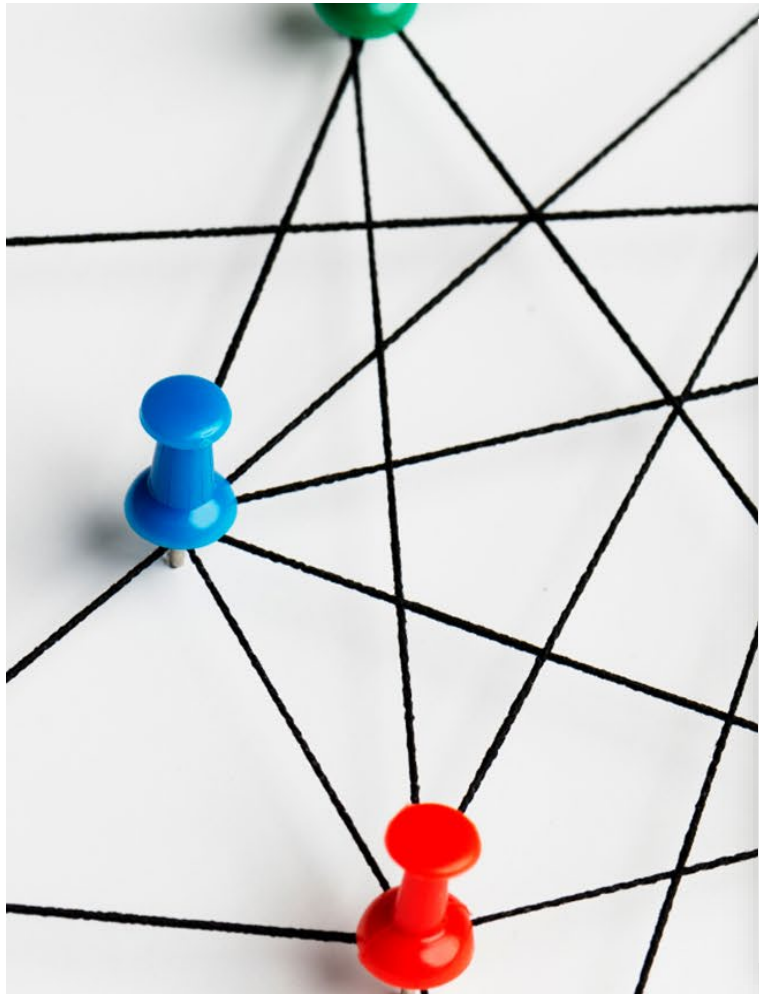
- (A) Is collected through a recycling collection service not provided under the opportunity to recycle;
- (B) Does not undergo separation from other materials at a commingled recycling processing facility; and
- (C) Is recycled at a responsible end market.

Clarifying ORS 459A.869(13)



- What is a recycling collection service “not provided under the opportunity to recycle?”
- How will end markets be verified?
- Clarification: this does not apply to collection counted toward PRO convenience and performance standards

Associated producers rule concept



State of Oregon Department of Environmental Quality
**Rule Concept: Associated Producers
and Designation of Large and Small
Producers**

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information to the Rulemaking Advisory Committee on a rule concept pertaining to the definitions of "small producer" and "large producer."

Per ORS 459A.869, producers of "covered products" must join a Producer Responsibility Organization, report data to the PRO on the amount of product they sell into the state, and pay membership fees. Small producers as defined at ORS 459A.863(32) are exempt from these requirements. Large producers as defined at ORS 459A.863(8) bear an additional requirement to disclose environmental impacts of a portion of their products, per ORS 459A.944(2).

The below rule concept addresses the potential for producers to either qualify for the small producer exemption or qualify as a large producer.

Concept for discussion at January 31, 2024 RAC meeting

I. Rule regarding associated producers and application of the "small producer" and "large producer" definitions

Per ORS 459A.872(1), "small producers" are exempt from the requirement to join a PRO and the requirements to report data and pay fees to a PRO. Small producers, per the definition in ORS 459A.863(32), include producers with less than \$5 million in gross (global) revenue in the organization's most recent fiscal year. Producers that sold in or into Oregon less than one metric ton of covered products in the most recent calendar year are also small producers.

This rule concept is intended to prohibit a producer from avoiding regulation by dividing its revenues and/or production of covered product among multiple entities to qualify for the small producer exemption.

It also addresses a similar concern with respect to a large producer avoiding the impact disclosure requirement applied by ORS 459A.944(2) to the top 25 producers by market share in the state. It would prohibit a producer from attributing its covered product tonnages to multiple subsidiaries rather than aggregating to the parent company to avoid qualifying as a "large producer."

DEQ proposes to require that market share data and revenues of *associated producers* be aggregated for the purposes of applying the "large producer" and "small producer" definitions. In addition, DEQ

Associated producers rule concept

Small producers

- Don't need to register with a PRO or pay fees
- Encompasses several types of producers, including those that meet either of the following two de minimis thresholds:
 - Less than \$5 million annual global revenue
 - Less than one metric ton of covered product sold into Oregon annually

Large producers

- Must evaluate and disclose the life cycle impacts of 1% of their covered products biennially
- Top 25 producers by weight-based market share

Associated producers rule concept

- Requires several types of associated businesses to lump their production and revenues for the purposes of applying the “small” and “large producer” designations.
- Rule concept is based on the “related parties” designation in the Federal tax code



Questions and answers/discussion



2024 PRO reporting requirement



State of Oregon Department of Environmental Quality

Rule Concept: Requiring PROs to Submit an Annual Report for 2024

Plastic Pollution and Recycling Modernization Act (SB 582, 2021)
Rulemaking Advisory Committee Meeting 4, Rulemaking 2

Jan. 17, 2024

Background

This memo provides background information on a rule concept that will allow DEQ to play an interim coordination role among prospective Producer Responsibility Organizations beginning in April 2024 should multiple prospective PROs submit draft plans to DEQ for review and approval.

Statute addresses the need for coordination among producer responsibility organizations if DEQ receives and approves multiple producer responsibility organization program plans. ORS 459A.869(9)(b) directs the Environmental Quality Commission to establish standards and requirements for coordination between producer responsibility organizations.

Rules approved by the Environmental Quality Commission in November 2023 clarify this piece of statute.

- OAR 340-090-0680 sets standards and requirements for coordination plans, including an interim coordination plan to be developed by DEQ and implemented by willing applicant and approved PROs until a long-term coordination plan is approved.
- OAR 340-090-0700(2) requires system costs to be divided among PROs in proportion to modified market share, including start-up costs incurred prior to the start date. Details on how costs will be reconciled in proportion to modified market share will be laid out in the interim coordination plan.
- DEQ will begin developing an interim coordination plan in April 2024 if multiple prospective PROs submit program plans.

Rule concept for discussion at January 31, 2024 RAC meeting: requiring PROs to submit an annual report for 2024

To fulfill its interim coordination oversight role and ensure that system costs are being divided among PROs in proportion to modified market share, DEQ will need specific financial data from PROs.

DEQ proposes the following rule concept:

Require PROs to submit an abbreviated annual report for 2024 on or before July 1, 2025. Required content of these reports would be limited to information on expenditures to cover system costs during the calendar year of 2024, as described in ORS 459A.887(3)(e)-(g).

2024 PRO reporting requirement



- Requires PROs to submit an annual report for 2024.
- PROs would need to report on system cost expenditures
- Reporting would enable DEQ's oversight during interim coordination over reconciliation of expenses among PROs in proportion to modified market share

Questions and answers/discussion

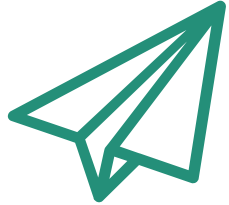


Next steps



- Connect with your networks
- Email any questions or feedback to:
recycling.2024@deq.oregon.gov
- Next RAC meeting is Feb. 14, 2024

More info



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Title VI and alternative formats

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